

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2014050996

ORDER GRANTING DISTRICT'S
PEREMPTORY CHALLENGE

On July 3, 2014, Rodney L. Levin, attorney for the Cupertino Union School District (District), filed a notice of peremptory challenge to Administrative Law Judge Joy Redmon in the above captioned matter. District's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act (APA), and California Code of Regulations, title 1, section 1034.¹

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings (OAH) hearing. (Cal. Code Regs., tit. 1, § 1034, subs. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

¹ On July 3, 2014, Parent, on behalf of Student, filed an opposition to District's challenge. A party does not have a right to oppose an initial peremptory challenge. Regardless, Student's opposition was considered due to the serious charge Parent was leveling against District's counsel. Student opposed the challenge on the assertion that Mr. Levin's signature on the pleading was forged, insinuating that Mr. Levin was acting in an unethical manner. Parent's assertion is without foundation. District's pleading contains Mr. Levin's signature, followed by an indication that it is being signed by another individual within the office on behalf of Mr. Levin. Such a signature is acceptable and Student's opposition is disregarded.

District's peremptory challenge is timely made and is granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c). The matter is reassigned to ALJ Margaret Broussard.

IT IS SO ORDERED.

DATE: July 7, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings